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Legal

Applicability of Hazardous Waste Fees to Insurance Companies

In your January 22, 1990 memorandum, you requested information concerning the applicability of hazardous waste fees to insurance companies. Specifically, you attached a copy of a petition for redetermination filed by Insurance Co., asserting that it is exempt from the generator fee (Health and Saf. Code § 25205.5) pursuant to Article XIII, Section 14 4.5 of the California Constitution. You also attached an letter from to , in which he stated that the generator fee does not apply to insurance companies, because the "tax" on generators of hazardous substances is not listed in the California Constitution as a tax that insurance companies must pay in addition to the tax on their gross premiums less returns.

On February 27, 1990, I received a letter from the Association of California Life Insurance Companies, posing similar questions concerning the applicability of the Superfund tax (Health and Saf. Code §§ 25342 and 25345) and environmental fee (Health and Saf. Code § 26205.6) to insurance companies. I have enclosed a copy of that letter.

Article XIII, Section 14 4/5 of the California Constitution, cited in Prudential's letter, was repealed in 1974. Taxation on insurance companies is currently addressed in Article XIII, Section 28. Subsection (b) imposes an annual tax on each insurer doing business in California, and Subsection (c) states that, in the case of an insurer not transacting title insurance in California, the tax is based on the amount of gross premiums, less return premiums, received in the year, other than premiums received for reinsurance and for ocean marine insurance. Subsection (c) also provides a special tax base for title insurance.

Article XIII, Section 28(f) states: "The tax imposed on insurers by this section is in lieu of all other taxes and licenses, state, county, and municipal, upon such insurers, and

their property", with certain exceptions not relevant to the consideration of the hazardous waste fees.

In my January 5, 1990 memorandum, relevant portions of which are attached, I concluded that banks are not subject to the hazardous waste fees, since, pursuant to constitutional and statutory provisions, banks pay a tax on their net income in lieu of other taxes and license fees. Article XIII, Section 27 of the California Constitution states that, "unless otherwise provided by the Legislature", the tax on banks will be based on their net income, and will be in lieu of all other taxes and license fees. Thus, the Legislature may provide that banks will pay certain taxes and/or license fees in addition to the "in lieu" tax. The Legislature has, in fact, made such provision in Section 23182 of the Revenue and Taxation Code, which lists the various taxes and fees banks must pay in addition to the "in lieu" tax. It is important to note that the Constitution gives no such authority to the California Legislature concerning insurance companies. Therefore, while the Legislature could vote to require banks to pay the hazardous waste fees, it could not do so concerning insurance companies.

The constitutional provisions concerning banks make reference to "taxes and license fees", while those concerning insurance companies refer only to "taxes and licenses". However, in Article XIII, Section 28(f)(2), which involves obligations imposed upon California insurers by the laws of other states, reference is made to "taxes, licenses and other fees", and Section 28(f)(5) refers to any "tax or license fee" imposed by the state on motor vehicles. This language supports the position that the Legislature intended to include the hazardous waste fees in the types of payments which insurance companies are not required to make in addition to the payment of the "in lieu" tax.

I therefore conclude that pursuant to Article XIII, Section 28 of the California Constitution, insurance companies pay a tax on their gross premiums in lieu of other taxes and license fees, including California's hazardous waste fees.

In your January 22 memo, you also questioned whether an insurance company would be exempt from the hazardous waste fees and taxes for other business activities. The California Supreme Court recently addressed that issue in Mutual Life Insurance Company of New York v. City of Los Angeles, issued March 26, 1990. In that case, an insurance company owned and operated an office building and parking lot. The City of Los Angeles sought to collect parking lot fee taxes, taxes on rental revenues, and utility users taxes associated with the operation of the building and parking lot. The Supreme Court found that the "in lieu"

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exemption applied to the insurer's investments, such as the office building and parking lot.

Thus, an insurance company pays tax on its gross premiums in lieu of other taxes and license fees, including those taxes and license fees which would otherwise be imposed concerning a business the insurance company owns or operates.

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Enclosures